



BANK OF ENGLAND
PRUDENTIAL REGULATION
AUTHORITY

Consultation Paper | CP9/16

Implementation of MiFID II: Part 1

March 2016

Prudential Regulation Authority
20 Moorgate
London EC2R 6DA

Prudential Regulation Authority, registered office: 8 Lothbury, London EC2R 7HH.
Registered in England and Wales No: 07854923



BANK OF ENGLAND
PRUDENTIAL REGULATION
AUTHORITY

Consultation Paper | CP9/16

Implementation of MiFID II: Part 1

March 2016

The Bank of England and the Prudential Regulation Authority (PRA) reserve the right to publish any information which it may receive as part of this consultation.

Information provided in response to this consultation, including personal information, may be subject to publication or release to other parties or to disclosure, in accordance with access to information regimes under the Freedom of Information Act 2000 or the Data Protection Act 1998 or otherwise as required by law or in discharge of our statutory functions.

Please indicate if you regard all, or some of, the information you provide as confidential. If the Bank of England or the PRA receives a request for disclosure of this information, the Bank of England or the PRA will take your indication(s) into account, but cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system on emails will not, of itself, be regarded as binding on the Bank of England and the PRA.

Responses are requested by 27 May 2016.

Please address any comments or enquiries to:

Gary Moore
Prudential Regulation Authority
20 Moorgate
London
EC2R 6DA

Email: CP9_16@bankofengland.co.uk

Contents

1	Overview	5
2	The PRA's approach to implementing MiFID II	6
3	Passporting	7
4	Algorithmic trading	9
5	The PRA's statutory obligations	11
	Appendices	13

1 Overview

1.1 In this consultation paper (CP) the Prudential Regulation Authority (PRA) sets out its proposals for rules to transpose the Markets in Financial Instruments Directive (MiFID II) legislative package, comprising the Directive, MiFID II (2014/65/EU),¹ and the Markets in Financial Instruments Regulation (2014/600/EU) (MiFIR).²

1.2 The CP is relevant to banks, building societies, PRA-designated investment firms and their qualifying parent undertakings, which for this purpose comprise financial holding companies and mixed financial holding companies, as well as credit institutions, PRA-designated investment firms and financial institutions that are subsidiaries of these firms.

1.3 The policy proposals included in this CP are:

- (a) the extension of scope and harmonisation of the passporting regime; and,
- (b) systems and controls for firms who undertake algorithmic trading and provide direct electronic access to trading venues.

Background

1.4 The first Markets in Financial Instruments Directive (MiFID) applied from 2007.³ It set conditions for the authorisation and ongoing regulation of investment firms, regulated markets and multilateral trading facilities (MTF). It was designed to encourage competition between trading venues and ensure appropriate levels of protection for investors and consumers of investment services across the European Economic Area (EEA).

1.5 Following the 2008 financial crisis, the European Commission (EC) reviewed the MiFID framework and concluded that it should be updated. These updates were designed to strengthen investor protection, reduce the risks of a disorderly market, address systemic risks, harmonise regulation across the European Union (EU) and increase the efficiency of financial markets.

1.6 As a result of this review, the EU adopted a new package in June 2014. The MiFID II package includes:

- a directive revising and expanding the existing framework, which will be implemented through the UK legislation in relevant areas; and,
- a regulation which applies directly to firms across the EU.

1.7 MiFID II is currently due to apply from 3 January 2017 and member states must transpose its provisions in national legislation and regulations by 3 July 2016. HM Treasury consulted on changes required to UK legislation in March 2015⁴ and the Financial Conduct Authority (FCA) consulted on some of the necessary changes to its Handbook in December 2015.⁵

¹ Directive 2014/65/EU: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32014L0065>

² Regulation 600/2014: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32014R0600>

³ Directive 2004/39/EC: <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1398325978410&uri=CELEX:02004L0039-20110104>

⁴ HM Treasury CP: Transposition of the Markets in Financial Instruments Directive II, March 2015; www.gov.uk/government/consultations/transposition-of-the-markets-in-financial-instruments-directive-ii

⁵ FCA CP15/43: Markets in Financial Instruments Directive II Implementation - Consultation Paper I, December 2015; www.fca.org.uk/news/cp15-43-mifid-ii-implementation-cp-i

1.8 In February 2016, the EC proposed to delay the application of MiFID II by one year to 3 January 2018, although this will only be confirmed when a legislative amendment has been adopted by the European Parliament and Council. The EC has not proposed to delay the deadline for transposition, currently 3 July 2016. However, some PRA proposals are dependent on level two delegated acts which the EC has not yet published. The PRA may need to incorporate changes to the draft rules at the point of their making to reflect any relevant changes to those delegated acts when finalised. This CP sets out the PRA's proposals for implementing MiFID II in algorithmic trading and passporting for UK firms only to provide clarity for firms. The PRA will further consult on proposals in other areas in due course.

Responses and next steps

1.9 This consultation closes on 27 May 2016. The PRA invites feedback on the proposals set out in this consultation. Please address any comments or enquiries to CP9_16@bankofengland.co.uk.

2 The PRA's approach to implementing MiFID II

2.1 MiFID II comprises a considerable package of reforms to the provision of investment services and activities in the EU. As the United Kingdom's prudential regulator for credit institutions and designated investment firms, the PRA is responsible for implementing those aspects of the MiFID II package that set out prudential requirements for PRA-designated firms.

2.2 As noted in paragraph 1.7, delays to the legislative process have meant that it is not possible to set out proposals in a number of areas. In particular, this affects proposals for transposing Article 16 of MiFID II and the granting of authorisations.

2.3 In some areas the PRA's existing rules are sufficient for the purposes of transposition. PRA Rulebook amendments are envisioned to implement the following MiFID II articles; Article 16 on organisational requirements, Article 17 on algorithmic trading and Articles 34-35 on providing investment services and activities within the EEA. There may also be proposals with regards to other elements of the package in due course, such as provisions in MiFIR which supersede PRA Rulebook provisions. The PRA will also bring forward proposals on granting authorisations for new regulated activities under MiFID II.

2.4 In the interests of providing as much clarity to firms as possible, the PRA has decided to publish its proposals for implementing as much of MiFID II as possible. This CP therefore sets out the PRA's approach on passporting and algorithmic trading. The PRA intends to publish a further CP in due course to cover the remaining areas for which PRA Rulebook amendments are required.

2.5 Coordination between the PRA and FCA is required under the Financial Services and Markets Act 2000 (FSMA) when either regulator is making rules. The PRA has aligned its proposals closely to those of the FCA, and this should contribute to ensuring clarity for firms and a proportionate approach to regulation.

3 Passporting

3.1 MiFID amends the existing passporting regime for investment services by extending its scope to include new activities and increasing harmonisation across the EEA.

3.2 The passporting regime allows firms to provide investment services and conduct investment activities in EEA states without requiring further authorisation. These cross border arrangements can be provided either on a freedom of establishment basis (establishment of a Branch or appointing a tied agent that is established in the host Member State) or a freedom of services basis (providing a service through means where there is no physical presence of the firm or its tied agent, ie telephone or internet banking).

3.3 This chapter sets out the PRA's approach to implementing the MiFID II provisions on passporting for UK firms in respect of freedom to establish a branch or to provide cross border services. The proposed amendments to the PRA Rulebook are set out in Appendix 1.

Background

3.4 The existing provisions on passporting under MiFID are set out in Articles 31 and 32. The provisions relating to passporting under MiFID II are set out in Articles 34 and 35. Under these Articles, firms seeking to provide investment services or undertake investment activities in another EEA member state must notify their home state regulator. The home state regulator is then responsible for notifying the host state regulator(s) of the firm's intention to conduct business in their jurisdiction.

3.5 Schedule 3 of FSMA and the EEA Passporting Regulations (2001) currently implement the requirements of several single markets Directives including MiFID. Additional requirements to be followed by firms are set out in the Passporting Part of the PRA Rulebook. These rules are principally procedural notifications and reporting requirements. They ensure that firms make the correct notifications to the PRA.

Extension of scope

3.6 MiFID II makes some small but important changes to the current passporting regime which impact dual-regulated firms. It extends the range of investment services and activities that can be passported into the United Kingdom. Under MiFID II, the scope includes the operation of an organised trading facility (OTF) and a new category of financial instruments, emissions allowances.

3.7 A firm's existing MiFID passport will remain valid and unchanged. However, each firm will need to assess whether, due to the extension in scope under MiFID II, it wishes to revise its existing passport arrangements to include these new activities or investment types.

3.8 If a firm is intending to passport any of these additional permitted activities or investment types, it must notify the PRA. As is currently required under MiFID, dual regulated firms should submit a change in notification to the PRA following the procedures laid out in the PRA Rulebook and on its webpages. They will be treated as a change in particulars, with the same statutory timeframe as set out in the relevant Directive.

Harmonised procedures and forms

3.9 Under MiFID II, the European Securities and Markets Authority (ESMA) has published draft harmonised technical standards and forms. Once adopted by the European Commission, they

will be directly applicable to investment firms and outline the standard notification procedures that investment firms and –where applicable – credit institutions should follow.

3.10 The PRA proposes to delete the existing MiFID notification forms from the PRA Rulebook and to link to the directly applicable EU notification forms on its website. The PRA proposes to extend the current declaration form that is used for passport notifications made under the Capital Requirements Directive IV (CRD IV)¹ to passport notifications made under MiFID II and suggests to make minor editorial changes to the declaration. The proposed amendments to the Passporting Part of the PRA Rulebook reflect the introduction of directly applicable forms and the changes in the scope of passport notification requirements under MiFID II.

Interaction with CRD IV

3.11 The PRA is responsible for processing of outward passport notifications under MiFID for all dual-regulated firms. The passporting provisions for investment services and activities are mainly applicable to investment firms. The scope of CRD IV, under the principle of mutual recognition, extends to include MiFID activities and credit institutions can passport these MiFID activities under its CRD passport. For firms wishing to passport MiFID activities under their CRD passport the PRA will continue to process these notifications as it currently does and using the forms published and adopted by the European Banking Authority (EBA). The PRA does not propose any changes to their current process for notifications under CRD.

3.12 Credit institutions should also note, however, the notification requirements with regard to tied agents under MiFID II and the directly applicable technical standards which are applicable to credit institutions.

Cost benefit analysis

3.13 The PRA concludes that its proposals will not add significant new costs for firms. The PRA envisages a minimal one-off cost to firms. This cost will be incurred when a firm submits a notification to the PRA of a change of particulars for existing passports, ie it intends to increase the activities and/or investment types. However, firms will benefit in the widening of scope of permitted activities and investment types carried out across the EEA.

3.14 The draft technical standards introduce and harmonise the approach for all EEA member states for passport notifications. The PRA envisage that this approach will simplify the notification process for member states and firms.

3.15 Acting in accordance with our responsibility as competent authority under EU law, there will be a cost implication to the PRA in processing these changes in notifications and any relevant system changes required.

Compatibility with the PRA's objectives

3.16 The PRA has a general objective to promote the safety and soundness of the firms it regulates and a specific insurance objective to contribute to the securing of an appropriate degree of protection for those who are or may become insurance policyholders. The PRA's proposals on passporting are intended to contribute to the safe operation of investment service providers through updating the PRA's rules in line with MiFID II. In this case, the proposals extend the scope of the passporting regime and increase harmonisation across the EEA.

1 Directive 2013/36/EU: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32013L0036>

3.17 The PRA has a secondary objective to facilitate, so far as is reasonably possible, effective competition in the markets for services provided by PRA-authorized persons in carrying out regulated activities. The PRA concludes that the proposals set out in this chapter continue to facilitate effective competition. The proposals will encourage provision of investment services between EEA member states, ensuring an effective single economic market across the EEA.

4 Algorithmic trading

4.1 Technological developments in trading, and in particular algorithmic trading, have driven new legislation in MiFID II. This sets out requirements for firms who engage in algorithmic trading activity, including high frequency trading. These requirements are set out in Article 17 of MiFID II and include obligations for firms to have systems and controls in regard to algorithmic trading.

4.2 There have not previously been any rules in the PRA Rulebook specifically focused on algorithmic trading. The PRA proposes to create a new Algorithmic Trading Part of the PRA Rulebook to transpose the prudential requirements under MiFID II. These will apply to Capital Requirements Regulation (CRR) firms, including credit institutions, which engage in algorithmic trading or provide direct electronic access to a trading venue. The proposed Algorithmic Trading Part is set out in Appendix 2.

4.3 The content of the new Algorithmic Trading Part is related to, but does not replace, the existing rules on firms' systems and controls. These are contained in the General Organisational Requirements, Skills, Knowledge and Expertise, Compliance and Internal Audit, Risk Control, Outsourcing and Record Keeping parts of the PRA Rulebook. The proposed Algorithmic Trading Part should be read in conjunction with the existing parts in the Rulebook.

4.4 The PRA's proposals closely mirror those on which the FCA consulted in its December 2015 consultation paper.¹ However, there are a number of areas where the PRA's proposals differ slightly. This is mostly a result of the two regulators having different objectives; the PRA's proposals focus on the safety and soundness of firms rather than the prevention of market abuse or disorderly markets. Further changes relate to differences of style between the PRA Rulebook and FCA Handbook, such as the transposition of EU definitions into the respective glossaries. Firms regulated by both the PRA and FCA are likely to be interested in the two regulators' approaches to supervising these rules. This is an area of ongoing collaboration and further clarity will be provided in due course about the supervision of algorithmic trading.

4.5 The PRA proposes that firms engaging in algorithmic trading should ensure that their trading systems;

- (a) are resilient and have sufficient capacity;
- (b) are subject to appropriate trading thresholds and limits; and,
- (c) prevent the sending of erroneous orders or contribute to a disorderly market.

4.6 As well as preventative systems and controls, the PRA proposes to require that firms have business continuity arrangements in place in the event of a failure. These arrangements should be fully tested and monitored.

¹ FCA CP15/43: Markets in Financial Instruments Directive II Implementation - Consultation Paper I, December 2015: www.fca.org.uk/news/cp15-43-mifid-ii-implementation-cp-i

4.7 Article 17(2) of MiFID II requires that firms notify the national competent authority immediately if they engage in algorithmic trading. As the FCA has consulted on proposals to require firms to notify the FCA, and all PRA-regulated firms would be covered by this requirement, the PRA does not consider it proportionate to impose a specific requirement on firms to immediately notify the PRA when they commence algorithmic trading. However, the Notifications Part of the PRA Rulebook contains general requirements for firms to notify the PRA of changes to their business, which may include the commencement of, or material changes to, the activities covered by the proposed rules. In addition, a firm engaging in algorithmic trading must notify the competent authority of the trading venue. In the United Kingdom, this would be the FCA but this requirement also extends to competent authorities of trading venues in other EEA states. The PRA proposes that this requirement should only be transposed by the FCA.

4.8 For the purposes of meeting ad hoc reporting requests, the PRA proposes requirements on record keeping. Firms would be required to keep records on the nature of their algorithmic trading strategies, details of trading parameters or limits and details on the testing of firms' systems.

4.9 The PRA's proposals include specific record keeping requirements for firms engaging in high frequency trading. As high frequency trading is a subsection of algorithmic trading, high frequency traders must follow the rules for algorithmic traders and for high frequency traders. Where there are different standards, the high frequency trader is bound by the stricter of the two rules.

Direct electronic access

4.10 The PRA is also setting out proposals to transpose requirements contained in Article 17(5) of MiFID II regarding direct electronic access to trading venues. These proposals require firms to put in place systems and controls; to review the suitability of clients using this service, prevent clients from exceeding appropriate pre-set trading and credit thresholds, and prevent trading by clients which may create risks to the firm. Under these proposals, firms providing direct electronic access services must keep appropriate records.

Cost benefit analysis

4.11 The PRA is required to implement MiFID II, which includes these requirements on algorithmic trading, and there are few areas of discretion. The proposals address a significant risk to the safety of firms and the resilience of financial markets. It is expected that the proposals will enhance the safety and soundness of firms engaging in algorithmic trading, the resilience of financial markets and confidence in investment services.

4.12 Firms which engage in algorithmic trading are likely to already have some element of these systems and controls in place as the provisions build on ESMA's 2012 algorithmic trading guidelines.¹ Firms who engage in algorithmic trading will already need to invest in technology and specialist resources. Furthermore, the PRA does not expect its rules to add additional costs to the rules on which the FCA consulted in December 2015.² Therefore the PRA expects these proposals to introduce limited new costs for firms.

1 Systems and controls in an automated trading environment for trading platforms, investment firms and competent authorities guidelines: www.fsa.gov.uk/static/pubs/other/esma-guidelines.pdf

2 FCA CP15/43: Markets in Financial Instruments Directive II Implementation - Consultation Paper I, December 2015: www.fca.org.uk/news/cp15-43-mifid-ii-implementation-cp-i

Compatibility with the PRA's objectives

4.13 The PRA has a general objective to promote the safety and soundness of the firms it regulates and a specific insurance objective to contribute to the securing of an appropriate degree of protection for those who are or may become insurance policyholders. These proposals are intended to contribute to the safety and soundness of firms engaging in algorithmic trading and direct electronic access by requiring them to put effective systems and controls in place to prevent trading failures and improve monitoring.

4.14 The PRA has a secondary objective to facilitate, so far as is reasonably possible, effective competition in the markets for services provided by PRA-authorized persons in carrying out regulated activities. Since the PRA expects its proposals to introduce only limited new costs for firms, it does not expect its proposals significantly impact competition.

5 The PRA's statutory obligations

5.1 Before making any rules, the Financial Services and Markets Act 2000 (FSMA)¹ requires the PRA to publish a draft of the proposed rules accompanied by:

- a cost benefit analysis;
- a statement as to whether the impact of the proposed rules will be significantly different to mutuals than to other persons;²
- an explanation of the PRA's reasons for believing that making the proposed rules is compatible with the PRA's duty to act in a way that advances its general objective³, insurance objective⁴ (if applicable), and secondary competition objective;⁵ and
- an explanation of the PRA's reasons for believing that making the proposed rules is compatible with its duty to have regard to the regulatory principles.⁶

5.2 The PRA is also required by the Equalities Act 2010⁷ to have due regard to the need to eliminate discrimination and to promote equality of opportunity in carrying out its policies, services and functions.

Cost benefit analysis

5.3 As a European Directive the United Kingdom has an obligation to implement MiFID II. The PRA concludes that the benefits of its proposals are proportionate to any costs. Cost benefit analysis has been set out separately in chapters 3 and 4.

Compatibility with the PRA's objectives

5.4 The PRA has a general objective to promote the safety and soundness of the firms it regulates and a specific insurance objective to contribute to the securing of an appropriate degree of protection for those who are or may become insurance policyholders. It also has a secondary objective to facilitate, so far as is reasonably possible, effective competition in the

1 Section 138J of FSMA

2 Section 138K of FSMA.

3 Section 2B of FSMA

4 Section 2C of FSMA

5 Section 2H(1) of FSMA.

6 Sections 2H(2) and 3B of FSMA.

7 Section 149 of the Equalities Act 2010

markets for services provided by PRA-authorized persons in carrying out regulated activities. Consideration of the compatibility with the PRA's objectives has been set out for each set of proposals separately in chapters 3 and 4.

Regulatory Principles

5.5 In developing the proposals set out in this CP, the PRA has had regard to the regulatory principles. Three of the principles in particular are relevant to this CP. These are set out in the paragraphs below.

5.6 The principle that a burden or restriction which is imposed on a person, or on the carrying on of an activity, should be proportionate to the benefits, considered in general terms, which are expected to result from the imposition of that burden or restriction. The PRA's approach to implementing MiFID II is to transpose the legislation in line with its responsibilities as a national competent authority, but while providing as much continuity as possible for firms and without enhancing or increasing the new requirements under MiFID II. The PRA's proposals are closely aligned with those of the FCA. It is the PRA's intention that extra burdens as a result of its implementation of MiFID II should be proportionate to the benefits.

5.7 The desirability of sustainable growth in the economy of the United Kingdom in the medium or long term. The proposals on passporting set out in this CP will increase the number of regulated investment activities and harmonise the passporting regime across the EEA. These proposals will create opportunities for relevant firms to expand the range of investment activities and services they undertake. Harmonisation of the passporting regime is expected to deepen the EEA single market in investment services and facilitate effective competition in the sector.

5.8 The principle that the regulators should exercise their functions as transparently as possible. Despite some uncertainty around the implementation of MiFID II, the PRA is setting out these proposals to provide clarity and certainty to firms on its approach to implementation. This is consistent with the principle that the PRA exercise its functions transparently.

Impact on mutuals

5.9 The PRA is required under section 138K(2) of FSMA to state whether the impact on mutual societies will be significantly different from the impact on other firms. In the PRA's opinion, the impact of the proposed rule changes on mutuals is expected to be no different from the impact on other firms.

Equality and diversity

5.10 The PRA has performed an assessment of the policy proposals and does not consider that the proposals give rise to equality and diversity implications.

Appendices

1 PRA Rulebook: Passporting instrument

2 PRA Rulebook: CRR firms: Algorithmic trading instrument

Appendix 1: PRA Rulebook: Passporting instrument

PRA RULEBOOK: PASSPORTING INSTRUMENT [DATE]

Powers exercised

- A. The Prudential Regulation Authority (“PRA”) makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 137G (The PRA’s general rules);
 - (2) section 137T (General supplementary powers); and
 - (3) paragraphs 19(10) and 20(4C) of Part III (Exercise of Passport Rights by UK firms) of Schedule 3 (EEA Passport Rights).
- B. The rule-making powers referred to above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

Pre-conditions to making

- C. In accordance with section 138J of the Act (Consultation by the PRA), the PRA consulted the Financial Conduct Authority. After consulting, the PRA published a draft of proposed rules and had regard to representations made.

PRA Rulebook: Passporting Instrument [Date]

- D. The PRA makes the rules in Annexes A to C to this instrument.

Commencement

- E. This instrument comes into force on [Date].

Citation

- F. This instrument may be cited as the PRA Rulebook: Passporting Instrument [Date].

By order of the Board of the Prudential Regulation Authority

[Date]

Part

PASSPORTING

1 APPLICATION AND DEFINITIONS

...

1.2 In this Part, the following definitions shall apply:

...

ITS 4

Commission Implementing Regulation (EU) No .../.. laying down implementing technical standards with regard to standard forms, templates and procedures for the transmission of information in accordance with MiFID.

...

MTF

has the meaning in Article 4 (1) MiFID.

OTF

has the meaning in Article 4 (1) MiFID.

...

RTS 3

Commission Delegated Regulation (EU) No .../... supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards specifying information to be notified by investment firms, market operators and credit institutions

2 NOTICE OF INTENTION TO ESTABLISH A BRANCH

...

2.2 A UK firm wishing to establish a *branch* within the territory of another *EEA State* for the first time under an *EEA right* other than derived from the *CRD* or *MiFID* must notify the *PRA* of its intention by submitting the form referred to in 10.1 (Branch Notification Form).

2.3 A UK firm wishing to establish a *branch* within the territory of another *EEA State* for the first time under an *EEA right* derived from the *CRD* must comply with the information requirements

set out in Commission Delegated Regulation (EU) 1151/2014 and notify the *PRA* of its intention by submitting the form in Annex I of Commission Implementing Regulation (EU) 926/2014 and the form referred to in 10.3 (CRD Declaration).

(Article 35 (2), CRD)

2.4 This rule applies to a UK firm in relation to its EEA rights derived from MiFID.

(1) A UK designated investment firm wishing to establish a branch within the territory of another EEA State must comply with the information requirements set out in Article 6 of RTS 3 and notify the PRA of its intention by submitting the form set out in Annex VI of ITS 4.

(2) A UK firm wishing to use a tied agent established in another EEA State must comply with the information requirements set out in Article 6 RTS 3 and notify the PRA of its intention by submitting the form set out in Annex VII of ITS 4.

(3) A UK firm notifying the PRA in accordance with (1) or (2) must also submit the form referred to in 10.3 (Declaration).

(Article 35 (2), (7) MiFID)

...

4 NOTICE OF INTENTION TO PROVIDE CROSS BORDER SERVICES

4.1 A UK firm intending to provide *cross border services* within the territory of another *EEA State* for the first time under an *EEA right* other than derived from the *CRD* or *MiFID* must notify the *PRA* of its intention by submitting the form referred to in 10.2 (Cross Border Services Notification Form).

4.2 A UK firm intending to provide *cross border services* within the territory of another *EEA State* for the first time under an *EEA right* derived from the *CRD* must comply with the information requirements set out in Commission Delegated Regulation (EU) 1151/2014 and notify the *PRA* of its intention by submitting the form in Annex V of Commission Implementing Regulation 926/2014 and the form referred to in 10.3 (CRD Declaration).

(Article 39 (1) CRD)

4.3 This rule applies to a UK firm in relation to its EEA rights derived from MiFID.

(1) A UK designated investment firm intending to provide cross border services within the territory of another EEA State for the first time must comply with the information requirements set out in Article 3 (1) of RTS 3 and notify the PRA of its intention by submitting the form set out in Annex I of ITS 4.

(2) A credit institution intending to provide cross-border services within the territory of another EEA State through tied agents must comply with the information requirements set out in Article 3 (2) of RTS 3 and notify the PRA of its intention by submitting the form set out in Annex I of ITS 4.

(3) A UK firm operating an MTF or OTF that intends to provide appropriate arrangements to facilitate access to and trading on those systems by remote users, members or participants in another EEA State must comply with the information requirements set out in Article 5 of RTS

3 and notify the PRA of the details of the EEA State in which it intends to provide such arrangements by submitting the form set out in Annex IV of ITS 4.

(4) A UK firm notifying the PRA in accordance with (1) to (3) must also submit the form referred to in 10.3 (Declaration).

(Article 34 (2), (5), (7) MiFID)

5 NOTICE OF CHANGE OF DETAILS TO A BRANCH

5.1 A UK firm other than a pure reinsurer exercising an EEA right other than derived from the CRD or MiFID that is required by the EEA Passport Rights Regulations to submit a notice of a change to a branch to the PRA must notify the PRA by submitting the form referred to in 10.1 (Branch Notification Form).

...

5.3

(1) A UK firm that has exercised an EEA right under the CRD and established a branch in another EEA State must notify the PRA of any change to the branch by submitting the form in Annex I of Commission Regulation 926/2014 and the form referred to in 10.3 (CRD Declaration) except where the change relates to a planned termination of the operation of the branch.

(2) A UK firm that has exercised an EEA right under the CRD and established a branch in another EEA State and that plans to terminate the operation of the branch must comply with the information requirements set out in Commission Delegated Regulation (EU) 1151/2014 and notify the PRA by submitting the form in Annex IV of Commission Implementing Regulation 926/2014 and the form referred to in 10.3 (CRD Declaration).

(Article 36(3) CRD)

5.4 This rule applies to a UK firm in relation to its EEA rights under MiFID.

(1) A UK firm that has established a branch in another EEA State must comply with the information requirements set out in Article 7(1) RTS 3 and notify the PRA of any change to the branch by submitting the form in Annex VI of ITS 4 except where the change relates to a planned termination of the operation of the branch.

(2) A UK firm that plans to terminate the operation of a branch must comply with the information requirements set out in Article 7 (2) RTS 3 and submit the form in Annex X of ITS 4.

(3) A UK firm notifying the PRA in accordance with 5.4(1) or 5.4(2) must also submit the form referred to in 10.3 (Declaration).

(Article 35(10) MiFID)

6 NOTICE OF CHANGE OF DETAILS TO CROSS BORDER SERVICES

...

6.2 A UK designated investment firm providing cross border services under MiFID and wishing to change the range of services or activities within the territory of another EEA State must comply with the information requirements in RTS 3 and notify the PRA by submitting the form in Annex I of ITS 4.

(Article 34 (2) MiFID)

...

10 FORMS

...

10.3 The ~~CRD~~ CRD Declaration can be found here [link].

Annex B

The Passporting Forms are amended as follows:

1. The content in Chapter 4 of the Branch Notification Form is deleted.
2. The content in Chapter 7 of the Cross Border Services Notification Form is deleted.



Annex C

Declaration

This declaration should be signed by a *UK firm* exercising an *EEA right* derived from the *CRD* or *MiFID*.

Warning

Knowingly or recklessly giving the FCA or the PRA information which is false or misleading in a material particular may be a criminal offence (sections 398 and 400 of the Financial Services and Markets Act 2000). The Notifications Part of the *PRA* Rulebook and SUP 15.6.1R and SUP 15.6.4R require an authorised person to take reasonable steps to ensure the accuracy and completeness of information given to the FCA/PRA and to notify the FCA/PRA immediately if materially inaccurate information has been provided.

If any information is inaccurate or incomplete this ~~application~~ notification may take longer to be processed.

You must notify us immediately of any significant change to the information provided. ~~If you do not, it may take longer to be processed. It could also call into question the applicant firm's suitability to be authorised.~~

Data Protection

For the purpose of complying with the Data Protection Act, the personal information in this Form may be used by the FCA/PRA to discharge its statutory functions under the Financial Services and Markets Act 2000 and other relevant legislation and will not be disclosed for any other purpose without the permission of the ~~applicant~~ firm.

Declaration

I confirm that a permanent copy of this ~~application~~ notification, signed by the firm will be retained for an appropriate period, for inspection at the FCA's/PRA's request.

I am authorised to make this ~~application for authorisation~~ notification on behalf of the ~~applicant~~ firm named on the front of this form.

I have attached the relevant documents where requested or where marked as 'to follow' I have them fully ready and I have taken all reasonable steps to ensure they are correct.

I confirm that the information in this ~~application~~ notification is accurate and complete to the best of my knowledge and belief.

I authorise the FCA/PRA to make such enquiries and to seek such further information as it thinks appropriate to verify the information given on this form.

I understand that the FCA/PRA may require the ~~applicant~~ firm to provide further information or documents at any time after I have sent this ~~application~~ notification.

Name	
Position	
IRN (if applicable)	
Signature	
Date	dd/mm/yy

Appendix 2: PRA Rulebook: CRR firms: Algorithmic trading instrument

PRA RULEBOOK: CRR FIRMS: ALGORITHMIC TRADING INSTRUMENT [DATE]

Powers exercised

- A. The Prudential Regulation Authority (“PRA”) makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 137G (The PRA’s general rules); and
 - (2) section 137T (General supplementary powers).
- B. The rule-making powers referred to above are specified for the purpose of section 138G(2) (Rule-making instruments) of the Act.

Pre-conditions to making

- C. In accordance with section 138J of the Act (Consultation by the PRA), the PRA consulted the Financial Conduct Authority. After consulting, the PRA published a draft of proposed rules and had regard to representations made.

PRA Rulebook: CRR Firms: Algorithmic Trading Instrument

- D. The PRA makes the rules in the Annex to this instrument.

Commencement

- E. This instrument comes into force on [DATE].

Citation

- F. This instrument may be cited as the PRA Rulebook: CRR Firms: Algorithmic Trading Instrument [DATE].

By order of the Board of the Prudential Regulation Authority

[DATE]

Annex

In this Annex, the text is all new and is not underlined.

Part

ALGORITHMIC TRADING

Chapter content

- 1. APPLICATION AND DEFINITIONS**
- 2. ALGORITHMIC TRADING**

Links

1 APPLICATION AND DEFINITIONS

1.1 Unless otherwise stated, this Part applies to a *CRR firm* that engages in *algorithmic trading*.

1.2 2.4 and 2.5 apply to a *CRR firm* that provides the services of *direct electronic access* to a *trading venue*

1.3 In this Part, the following definitions shall apply:

algorithmic trading

has the meaning given in Article 4(1)(39) of *MiFID II*.

direct electronic access

has the meaning given in Article 4(1)(41) of *MiFID II*.

high-frequency algorithmic trading technique

has the meaning given in Article 4(1)(40) of *MiFID II*.

RTS 6

means Commission Delegated Regulation (EU) No .../.. of [date] supplementing *MiFID II* with regard to regulatory technical standards specifying the organisational requirements of investment firms engaged in algorithmic trading, providing direct electronic access and acting as general clearing members.

trading venue

has the meaning given in Article 4(1)(24) of *MiFID II*.

1.3 The definitions in *MiFID II* referred to in 1.3 shall be read on the basis that references in that directive to a 'regulated market', an 'MTF' or an 'OTF' are references to:

- (a) a system falling within any of Articles 4(1)(21), (22) and (23) of *MiFID II* respectively; and
- (b) a system that is not situated in an *EEA State* that would have fallen within (a) had it been so situated.

2 ALGORITHMIC TRADING

- 2.1 A *firm* must have in place effective systems and risk controls, suitable to the business it operates, to ensure that its trading systems:
- (1) are resilient and have sufficient capacity;
 - (2) are subject to appropriate trading thresholds and limits; and
 - (3) prevent the sending of erroneous orders, or the systems otherwise functioning in a way that may create or contribute to a disorderly market.

[Note: Art. 17(1) of *MiFID II*]

2.2 A *firm* must:

- (1) have in place effective business continuity arrangements to deal with any failure of its trading systems; and
- (2) ensure that its systems are fully tested and properly monitored to ensure they meet the requirements of (1) and 2.1.

[Note: Art. 17(1) of *MiFID II*]

2.3 A *firm* must make and retain the following records:

- (1) a description of the nature of its *algorithmic trading* strategies;
- (2) details of the trading parameters or limits to which the *firm's* system is subject;
- (3) evidence that 2.1 and 2.2 are met;
- (4) details of the testing of the *firm's* systems;
- (5) if it engages in a *high frequency algorithmic trading technique*, accurate, and time sequenced records in the approved form of all its placed orders, including:
 - (a) cancelled orders;
 - (b) executed orders; and
 - (c) quotations on *trading venues*; and
- (6) any further relevant information about the *firm's algorithmic trading* and systems used for that trading.

[Note: Art. 17(2) of *MiFID II*. See Articles 28 and 29 of [RTS 6] for related provisions.]

2.4 A *firm* that provides *direct electronic access* to a *trading venue* must have in place systems and controls which:

- (1) enable it assess and review the suitability of *clients* using the service of *direct electronic access* to a *trading venue*;
- (2) prevent *clients* using the service from exceeding appropriate pre-set trading and credit thresholds; and
- (3) prevent trading by *clients* which may create risks to the *firm*.

[Note: Art. 17(5) of *MiFID II*]

2.5 A *firm* that provides *direct electronic access* to a *trading venue* must make and retain the following records if it provides *direct electronic access* services:

- (1) a description of the systems and controls in 2.4;
- (2) evidence that those systems and controls have been applied; and
- (3) on other relevant matters referred to in 2.4 in relation to systems and controls.

[Note: Art. 17(5) of *MiFID II*]

ALGORITHMIC TRADING

Externally defined glossary terms

Term	Definition source
<i>EEA State</i>	<i>Schedule 1 Interpretation Act 1978</i>